21 C.J.S. Courts § 222

Corpus Juris Secundum | May 2023 Update

Courts
M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc; and Lonnie E. Griffith, Jr., J.D.

VI. Rules of Adjudication, Decisions, and Opinions

B. Stare Decisis

3. Extent of Precedential Effect of Decision

§ 222. Constitutional questions

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Courts 90(3)

Ordinarily, courts will not inquire into constitutional questions that have been decided, but they have some freedom to reassess the interpretation of constitutional provisions.

As a rule, a court will not inquire into the construction of a constitutional provision or the constitutionality of a statute or ordinance if the question has been decided in previous decisions[1] by a court of last resort,[2] even though a different result might be desirable,[3] unless the previous decision was manifestly erroneous,[4] and there are cogent reasons for overruling it.[5] This rule particularly applies if the public has long relied on the decisions as authoritative.[6] However, it is a high court's duty to reexamine a precedent if its construal of a constitution is fairly called into question.[7] The United States Supreme Court may revisit its decisions on the constitutionality of laws[8] and may consider the constitutionality of a law in its current setting if circumstances take much of the validity from the prior case[9] or the precedent is inconsistent with a more recent line of Supreme Court decisions.[10]

The doctrine of stare decisis does not apply with the same force to decisions on constitutional questions as to other decisions,[11] because the Supreme Court's interpretation can be altered only by a constitutional amendment or overruling the Court's prior decisions,[12] and correction through legislative action is practically impossible.[13] However, when later opinions of the United States Supreme Court show that a state court's constitutional interpretations are incorrect, the state supreme court must bring its decisions into conformity with Supreme Court precedent.[14]

When two enactments are substantially identical, a decision on the validity of one may resolve the validity of the other.[15] However, decisions as to the constitutionality of a statute do not determine the validity of a later statute or ordinance that is essentially different[16] even though the grounds of attack are the same.[17]

Similar provisions of other constitutions.

Decisions in other states bearing on the same or similar constitutional language may be considered or afforded persuasive effect when interpreting a state constitution.[18] However, a state supreme court may depart from the interpretation of a similar constitutional provision made by the United States Supreme Court or any other court based on the text, history, and decisional law elaborating the state constitutional right.[19]

Questions not expressly considered.

Prior decisions in which the construction of a constitutional provision or the constitutionality of a statute was assumed, but not expressly raised or considered, are not ordinarily controlling,[20] at least if that question was not necessarily involved in the case.[21] Although it has been held that a previous decision upholding the constitutionality of a statute concludes all objections to its constitutionality, regardless of whether the objections were considered in the previous case,[22] it is more commonly held that a decision that a statute is constitutional does not preclude the court from later declaring it unconstitutional in a case challenging the statute on other grounds.[23]

CUMULATIVE SUPPLEMENT

Cases:

When one of the Supreme Court's constitutional decisions goes astray, the country is usually stuck with the bad decision unless the Court corrects its own mistake, and while an erroneous constitutional decision can be fixed by amending the Constitution, the Constitution is notoriously hard to amend, and thus, in appropriate circumstances the Court must be willing to reconsider and, if necessary, overrule its constitutional decisions. U.S Const. art. 5. Dobbs v. Jackson Women's Health Organization, 142 S. Ct. 2228 (2022).

Judicial decisions that find in the Constitution principles or values that cannot fairly be read into that document usurp the people's authority, for such decisions represent choices that the people have never made and that they cannot disavow through corrective legislation, and for this reason, it is essential that the Supreme Court maintain the power to restore authority to its proper possessors by correcting constitutional decisions that, on reconsideration, are found to be mistaken. Dobbs v. Jackson Women's Health Organization, 142 S. Ct. 2228 (2022).

The doctrine of stare decisis is at its weakest when the Supreme Court interprets the Constitution, because a mistaken judicial interpretation of that supreme law is often practically impossible to correct through other means. Ramos v. Louisiana, 140 S. Ct. 1390 (2020).

The doctrine of stare decisis is at its weakest when the Supreme Court interprets the Constitution, because only the Supreme Court or a constitutional amendment can alter Supreme Court holdings. Knick v. Township of Scott, Pennsylvania, 139 S. Ct. 2162 (2019).

Stare decisis did not counsel against overruling *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209, 97 S.Ct. 1782, 52 L.Ed.2d 261, which wrongly held public-sector agency-shop arrangements, under which public-sector unions charge nonmembers for proportionate

share of union dues attributable to union's activities as collective-bargaining representative, did not violate the First Amendment; *Abood* was poorly reasoned, its proponents had abandoned its reasoning, it failed to see that designation of a union as exclusive representative and imposition of agency fees were not inextricably linked, it conflicted with other First Amendment decisions, its line between chargeable and nonchargeable union expenditures had proven to be impossible to draw with precision, and subsequent developments had eroded its underpinnings. U.S.C.A. Const.Amend. 1. Janus v. American Federation of State, County, and Mun. Employees, Council 31, 138 S. Ct. 2448 (2018).

Doctrine of stare decisis required application of precedent that concluded disparate tax treatment of items sold through vending machines, as compared to those sold at grocery and convenience stores, was constitutional, under the federal Equal Protection Clause, or the state Equal Privileges and Immunities clause, absent showing that intervening case law changed the constitutional analysis. U.S.C.A. Const.Amend. 14, § 1; West's A.I.C. Const. Art. 1, § 23. RDM Sales and Service, Inc. v. Indiana Dept. of State Revenue, 57 N.E.3d 901 (Ind. Tax Ct. 2016).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Cox v. Wood, 247 U.S. 3, 38 S. Ct. 421, 62 L. Ed. 947 (1918).

Ind.—Borgman v. City of Fort Wayne, 215 Ind. 201, 18 N.E.2d 762 (1939).

Ky.—Jefferson County Fiscal Court v. Thomas, 279 Ky. 458, 130 S.W.2d 60 (1939).

Tex.—Morrow v. Corbin, 122 Tex. 553, 62 S.W.2d 641 (1933).

2 Haw.—State v. Enos, 68 Haw. 509, 720 P.2d 1012 (1986).

N.C.—Stephenson v. Bartlett, 355 N.C. 354, 562 S.E.2d 377 (2002).

3 Ark.—Tindall v. Searan, 192 Ark. 173, 90 S.W.2d 476 (1936).

Ky.—Bankers Bond Co. v. Buckingham, 265 Ky. 712, 97 S.W.2d 596 (1936).

4 Mont.—State ex rel. Sparling v. Hitsman, 99 Mont. 521, 44 P.2d 747 (1935).

5 Alaska—Thomas v. Anchorage Equal Rights Com'n, 102 P.3d 937, 10 A.L.R.6th 789 (Alaska 2004).

Mont.—Public Lands Access Ass'n v. Board of County Com'rs of Madison County, 2014 MT 10, 373 Mont. 277, 321 P.3d 38 (2014).

Principled argument
Or.—Stranahan v. Fred Meyer, Inc., 331 Or. 38, 11 P.3d 228 (2000).

6 Ark.—O'Daniel v. Brunswick Balke Collender Co., 195 Ark. 669, 113 S.W.2d 717 (1938).

7 Ala.—Marsh v. Green, 782 So. 2d 223 (Ala. 2000).

Mich.—Robinson v. City of Detroit, 462 Mich. 439, 613 N.W.2d 307 (2000).

8 U.S.—State Bd. of Ins. v. Todd Shipyards Corp., 370 U.S. 451, 82 S. Ct. 1380, 8 L. Ed. 2d 620 (1962).

9 U.S.—Tigner v. Texas, 310 U.S. 141, 60 S. Ct. 879, 84 L. Ed. 1124, 130 A.L.R. 1321 (1940).

10 U.S.—Agostini v. Felton, 521 U.S. 203, 117 S. Ct. 1997, 138 L. Ed. 2d 391, 119 Ed. Law Rep. 29, 37 Fed. R. Serv. 3d 1051 (1997).

11 U.S.—Agostini v. Felton, 521 U.S. 203, 117 S. Ct. 1997, 138 L. Ed. 2d 391, 119 Ed. Law Rep. 29, 37 Fed. R. Serv. 3d 1051 (1997).

Ind.—In re Todd, 208 Ind. 168, 193 N.E. 865 (1935).

12 U.S.—Agostini v. Felton, 521 U.S. 203, 117 S. Ct. 1997, 138 L. Ed. 2d 391, 119 Ed. Law Rep. 29, 37 Fed. R. Serv. 3d 1051 (1997).

13 U.S.—Seminole Tribe of Florida v. Florida, 517 U.S. 44, 116 S. Ct. 1114, 134 L. Ed. 2d 252 (1996).

14 Ariz.—State v. Davis, 206 Ariz. 377, 79 P.3d 64 (2003).

15 Md.—Billig v. State, 157 Md. 185, 145 A. 492 (1929).

16 Fla.—Bentley-Gray Dry Goods Co. v. City of Tampa, 137 Fla. 641, 188 So. 758 (1939).

Ill.—People ex rel. Cort Theater Co. v. Thompson, 283 Ill. 87, 119 N.E. 41 (1918).

17 Mo.—State v. Missouri Pac. R. Co., 242 Mo. 338, 147 S.W. 118 (1912).

18 N.H.—State v. Roache, 148 N.H. 45, 803 A.2d 572 (2002) (identical language and shared history of provisions).

Wyo.—Geringer v. Bebout, 10 P.3d 514 (Wyo. 2000).

19 Ind.—State v. Gerschoffer, 763 N.E.2d 960 (Ind. 2002).

20 Ariz.—Arizona State Bank v. Crystal Ice & Cold Storage Co., 26 Ariz. 205, 224 P. 622 (1924).

Ark.—Leonards v. E.A. Martin Machinery Co., 321 Ark. 239, 900 S.W.2d 546 (1995).

Mass.—Vigeant v. Postal Telegraph Cable Co., 260 Mass. 335, 157 N.E. 651, 53 A.L.R. 867 (1927).

Wis.—Scobie v. Wisconsin Tax Commission, 225 Wis. 529, 275 N.W. 531 (1937).

21 Ark.—Ellison v. Oliver, 147 Ark. 252, 227 S.W. 586 (1921).

22 Va.—Miller v. State Entomologist, 146 Va. 175, 135 S.E. 813, 67 A.L.R. 197 (1926), aff'd, 276 U.S. 272, 48 S. Ct. 246, 72 L. Ed. 568 (1928).

23 Fla.—Volusia County v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126 (Fla. 2000).

Ill.—Parks v. Libbey-Owens-Ford Glass Co., 360 Ill. 130, 195 N.E. 616 (1935).

La.—State ex rel. Curtis v. Ross, 144 La. 898, 81 So. 386 (1919).

End of Document